

**LETTER OPINION
2004-L-14**

February 11, 2004

The Honorable Larry Bellew
House of Representatives
1309 25th Place NW
Minot, ND 58703

Dear Representative Bellew:

Thank you for asking whether a park district under N.D.C.C. ch. 40-49 may fund a local nonprofit council on the arts to run programs for the park district in city parks open to the public. I am advised that each Thursday and Sunday during the summer months a musical group is hired by a Minot arts council to present concerts in a city park. The Minot Park District funds these concerts through the arts council. All arrangements for the concerts are handled by the arts council.

City park districts may be established under N.D.C.C. ch. 40-49 to provide parks and recreation for the public. See N.D.C.C. §40-49-04 (park includes public recreation areas devoted to the use and accommodation of the public). Recreation is a stimulating or amusing activity that refreshes the mind or body. The American Heritage Dictionary 1035 (2d. coll. ed. 1991). Musical concerts held in parks may be characterized as recreational. Thus, the park district is authorized to provide musical concerts to the public. N.D.C.C. § 40-49-04.

Moreover, a park district is authorized to enter into contracts. N.D.C.C. § 40-49-04(2). Therefore, a park district may contract with another entity, in this case a nonprofit arts council, to present musical concerts in city parks.

Legal counsel for the Minot Park District was wary of the park district funding arrangement because of N.D.A.G. 2002-F-09. That opinion concluded a donation by the Burleigh County Commission for a July 4th celebration violated N.D. Const. art. X, § 18, which restricts donations of public funds, primarily because the county lacked the statutory authority to do so. N.D.A.G. 2002-F-09. "There is a distinction[, however,] between a donation and an exchange for value, which does not violate N.D. Const. art X, § 18." N.D.A.G. 2003-L-09 (citing Adams County Record v. Greater North Dakota Assoc., 529 N.W.2d 830, 835 (N.D. 1995). See also N.D.A.G. 98-F-19 and N.D.A.G.

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2001-O-11 (concluding reimbursement of entities with public funds for goods and services is an exchange for fair market value). In this case, the park district pays the arts council to provide musical concerts in a city park. This transaction is a fee-for-service agreement and not a donation.

In conclusion, it is my opinion that a city park district may contract with and pay a nonprofit arts council to present musical concerts for the park district in city parks.

Sincerely,

Wayne Stenehjem
Attorney General

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